EX PARTE OR LATE FILED

Association for Local Telecommunications Services

October 19, 1998

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C., 20554

Re: *Ex Parte* in CC Docket No. 98-147

Dear Ms. Salas:

Please file the attached document as part of the record in the above-captioned proceeding. This document, entitled: Summary of Comments Submitted in CC Docket No. 98-147 FCC's NPRM re Section 706/Advanced Telecommunications Capability, is being made available to FCC staff as a courtesy. The document is not intended as advocacy but merely a brief summary of the parties' comments.

An original and two copies are being submitted in accordance with Section 1.1206(b)(2) of the Commission's rules.

Sincerely,

Kimberly M. Kirby

Kimberly M.Kirby

Attachment

888 17th Street, NW • Suite 900 • Washington, DC 20006 • 202.969.ALTS • Fax: 202.969.ALT1

SUMMARY OF COMMENTS
CC DOCKET NO. 98-147

Summary of Comments Submitted in CC Docket No. 98-147
FCC's NPRM re Section 706/Advanced Telecommunications Capability

1. AD HOC TELECOMMUNICATIONS USERS COMMITTEE

1-3 The NPRM represents an effective and well-considered effort to accelerate the deployment of advanced services in furtherance of Section 706 in a manner consistent with the pro-competitive mandates of the 1996 Act. The proposals in the NPRM strike a proper balance between the goal of providing meaningful incentives for ILECs to deploy advanced services and the need to adopt safeguards to stimulate competition in the provision of these services. The FCC must now ensure that all advanced services providers continue to have equal opportunities to compete. Accordingly, the Commission must periodically review the state of competition in the advanced services market, and, when necessary, modify its rules and policies as appropriate.

4 The FCC's pro-competitive proposals for encouraging deployment of advanced services are a reasonable beginning, but additional safeguards are necessary to enhance opportunities for competition in the advanced services market. The Ad Hoc Committee believes the FCC's emphasis on competition as a means of achieving its goals is the correct approach.

5-8 For decades the FCC has emphasized the importance of competition in reducing the costs of telecommunications services and equipment, increasing consumer choice, and spurring innovation. The 1996 Act reaffirms the principle that vigorous competition is the most effective means of fostering the introduction of innovative services and products at reasonable prices. The Commission's efforts to accelerate the deployment of advanced services should be based on this same principle.

8-10 Available evidence suggests that demand for advanced, broadband services

(particularly for use with Internet and other information services) far outstrips their current supply and availability. Thus, the slow deployment of advanced services to date appears to result from the absence of a competitive market for the provision of such services rather than a lack of demand. In noncompetitive markets, monopolists such as the ILECs may deliberately constrict supply, or otherwise distort the market, for various strategic reasons. To combat this the FCC must adopt effective measures to eliminate or reduce barriers to entry.

11-13 In the absence of viable competition for the provision of advanced services using existing "last mile" connections, ILECs have shown little inclination to deploy such services in a timely fashion. ILECs may view advanced services, with their potential to supplant the circuit-switched network with an independent packet-switched architecture for both voice and data, as a potential threat to their market positions rather than a technological leap to adopt and develop. In addition, ILECs have a strong financial interest in delaying the deployment of low-cost, high-speed digital services: ILECs enjoy generous profit margins on the provision of business T-1 private lines which far exceed those they could expect from provision of comparable xDSL service. For these reasons, reform that will encourage development of competition for the "last mile" connection to the end user rather than deregulation of ILEC provision of advanced services is necessary.

13-15 ILEC claims regarding their lack of incentives to deploy advanced services have no economic basis. ILECs allege that they want to take advantage of the economies of scope and scale inherent in their networks by integrating provision of the underlying broadband transmission service with content-based on-line services and deregulating their advanced services. However, it would appear that there are no economies of scope and scale between the last mile connection and advanced services or between advanced transmission services and on-line information services.

15-17 The Video Dial Tone ("VDT") case demonstrates the importance of emerging competitors as an inspiration for the ILECs to deploy new network technologies, and the likely outcome when that potential competition is diminished or eliminated. VDT was a plan established in 1992 under which the ILECs would upgrade their existing networks to provide video and potentially other multimedia services. The ILECs rushed to deploy VDT service when they perceived cable television companies as a threat to their telephony markets. Then, however, when the ILECs perceived that cable apparently was no longer a threat, they suddenly abandoned their VDT plans. This VDT experience illustrates the effective manner in which competition stimulates the ILECs to deploy new technologies.

18 The Ad Hoc Committee supports the FCC's proposal to allow ILECs to choose between offering advanced services on an integrated basis, fully subject to Section 251, or offering such services through deregulated separate affiliates. However, adequate safeguards are necessary to ensure that the ILECs are not able to monopolize the provision of advanced broadband services, and hence the Internet access and other information services markets.

19-20 ILECs will be constrained in their ability to monopolize the advanced services market only if: (1) there exists robust, widespread, and sustainable facilities-based competition for "last-mile" access that is sufficient to limit ILEC market power and encourage ILECs to interconnect freely with competitors, or risk significant loss of market share; or (2) other advanced services providers have non-discriminatory access to ILEC bottleneck facilities at prices that are economically correct and equal to those paid by the ILEC advanced services affiliate. It is crucial to the development of competition in both the advanced services and information services markets that the FCC adopt measures that will curb ILECs' opportunities for anti-competitive conduct and will allow new providers to enter the advanced services market on fair terms.

21-23 Although the FCC's proposal to give ILECs the option of providing advanced services on either an integrated or separate basis should be helpful to competition, additional safeguards are necessary to ensure that the ILECs do not engage in anti-competitive behavior. For example, ILECs may engage in price squeezes to make it more difficult for competitors to enter the market; the Commission should adopt safeguards to prevent and address this conduct. In addition, the Commission should require ILECs to set rates for network facilities and functions that are economically rational and cost-based, and should prevent ILECs from establishing provisioning arrangements whose operation and effect is to create additional costs for competing providers that the ILECs' own advanced services affiliates can evade. Further, the Commission should adopt several of its proposed safeguards regarding transfers of assets or services between ILECs and their affiliates. The Ad Hoc Committee agrees with the Commission's tentative conclusion to apply its affiliate transaction rules in their entirety to transfers between ILECs and their affiliates.

24 The Commission should also require that a minority of the equity of an ILEC advanced services subsidiary be held by entities unaffiliated with the ILEC. This will limit the ILEC's potential motivation to engage in self-dealing or to unfairly benefit its subsidiary, and guarantee that independent parties have a financial interest in ensuring that the ILEC does not abuse the parent-subsidiary relationship.

25 Any entity that provides advanced services on a common carrier basis and all ILEC advanced services affiliates should be subject to Sections 201, 202, and 208 of the Communications Act. In the absence of an advanced services affiliate having market power, however, the Commission may forbear from imposing regulatory requirements on advanced services providers. In addition, the Commission should adopt all of its proposals to increase collocation opportunities at ILEC offices.

26 The Commission should reiterate that ILECs providing advanced services must provision conditioned loops and other UNEs to competitors and ISPs on a non-discriminatory, timely basis.

27-28 The Commission should require all ILECs to give competitive ISPs and data providers unbundled access at the ILECs' switch locations to aggregated data traffic from the ILECs' customers at cost-based, economically efficient rates. To implement

this proposal the Commission should require ILECs to provide spectrum unbundling on request and on reasonable, non-discriminatory terms and conditions. This should minimize the anticompetitive impact of ILEC control of the local loop. However, ILECs should not be disadvantaged relative to new competitors. ILEC deployment of advanced services should not be hampered by unnecessary rate regulation, and ILECs should not be compelled to offer competitors conditioned loops for less than their cost to prepare the loops were the ILECs to offer the service themselves. Further, ILECs offering service via the separate affiliate should not be required to offer any of the affiliate's services or equipment as unbundled elements.

29-30 The Commission should adopt measures to remedy the adverse consequences that could occur in the future if its proposals fail to create a competitive market for advanced services.

30 The NPRM represents a reasonable, balanced first step toward accelerating the deployment of advanced services in accordance with Section 706. It proposes measures that should promote competitive entry while offering ILECs alternative approaches for deploying advanced services, each with compelling incentives.

2. ALLEGIANCE TELECOM, INC.

1 Allegiance Telecom is a CLEC, IXC, and international carrier that is rapidly expanding its provision of various competitive telephone services, Internet access, operator services, and high-speed data services to areas throughout the country.

2-3 Because ILECs are inconsistent in the standards of collocation they impose on CLECs, the FCC should adopt national collocation standards. Accordingly, because ILEC networks and facilities generally use the same technologies, the Commission should determine that any collocation practice permitted by one ILEC should be required of all ILECs.

3-4 There is no basis for differentiating between circuit or packet switching equipment for purposes of collocation. Thus, the Commission should require ILECs to permit collocation by competitors of any kind of telecommunications equipment used for voice and data services. In addition, the Commission should prohibit ILECs from imposing safety standards that are more stringent than those they apply to themselves.

4-5 ILECs use caged collocation to impose a number of arbitrary ordering, construction, and installation requirements that often delay collocation. Accordingly, the Commission should mandate that ILECs offer cageless collocation, allowing for the use of security cabinets at the CLEC's option. Further, the Commission should establish the terms and conditions of cageless collocation as well as procedures that CLECs may use to obtain collocation that will prevent ILECs from creating new barriers to collocation such as unnecessary security or space preparation requirements.

5-6 To ameliorate space shortages in central offices, the Commission should require

ILECs to: (1) make collocation a design criterion of all new central offices; (2) make unused space immediately available for collocation; (3) replace older equipment; (4) install new equipment in a space-efficient manner; (5) give up any space held in reserve prior to denial of physical collocation; (6) prohibit further use of central office space for administrative purposes; and (7) provide CLECs with a report showing available collocation space on request. The FCC should also establish a regulatory framework to facilitate use of virtual collocation.

7-10 The Commission should adopt as a national standard for local loop unbundling any unbundling option or practice requested by CLECs that any ILEC provides or that any state commission has directed an ILEC to provide. A key national standard will be a requirement that ILECs provide "conditioned" loops. As part of its OSS rules, the Commission should also require ILECs to provide requesting CLECs with sufficient information about the loop to enable them to determine whether the loop is capable of supporting xDSL. Allegiance urges the Commission to rely on further industry input and industry consensus prior to adopting technical loop spectrum management standards. However, it would promote the goals of Section 706 to allow a CLEC to use part of the available loop spectrum to provide advanced services while the ILEC continues to provide voice service over the same loop. The FCC also should establish uniform national standards for attachment of electronic equipment at the central office analogous to the Part 68 program for connection of customer-provided equipment to the network. Finally, loop unbundling requirements should be extended to sub-loop elements, and the Commission should specify that ILECs may not raise technical issues as a barrier to providing sub-loop unbundling to a requesting CLEC.

10-11 The Commission should affirm that an advanced service is not an exchange access service unless used solely for the purpose of completing telephone toll calls. Further, the Commission should impose the resale obligations of Section 251(c)(4) to any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers, regardless of whether the service in question is classified as a local exchange or exchange access service.

11-14 The FCC should issue a declaratory ruling in this proceeding that ILECs must provide to requesting interconnecting carriers direct optical interconnection of optical facilities. Specifically, the Commission should require ILECs to permit interconnection through direct fiber meet arrangements in ILEC central offices or at other points in the network where it is technically feasible to do so. ILECs have been denying Allegiance's request for such direct optical interconnection, which imposes unnecessary costs on CLECs and hinders their provision of advanced services, and, moreover, is a violation of Section 251(c) and the *Local Competition Order*.

14-16 In this proceeding the Commission should take steps to promote the availability of dark fiber by resolving the uncertainty concerning the regulatory status of dark fiber and by determining that dark fiber is a UNE.

17-19 The FCC's proposed scheme of unregulated separate advanced services affiliates is

unlawful. Structural separation is not determinative of whether an affiliate is a successor or assign -- because a completely independent company can be a successor or assign, no structural safeguards, no matter how stringent, will be sufficient to immunize an affiliate from that status. Congress's purpose in establishing the definition of ILEC was not to provide a loophole for ILECs to escape the interconnection and unbundling requirements of Section 251. Accordingly, the FCC should adopt a strict interpretation of "successor or assign."

19-20 The Commission's proposed allegedly *de minimis* exceptions to the general prohibition on transfers of assets to the affiliate are in reality sweeping in scope. For example, transfers of facilities that are or could be UNEs, network equipment necessary to provide advanced services, communications equipment for the purpose of testing new services, CPNI, customer accounts, employees, and brand names are all within the scope of the Commission's contemplated *de minimis* transfer exception. These are all key assets that derive and are inescapable from the fact that the ILEC has been and remains a monopoly provider. The breadth of transfers of assets such as these, and other relationships permitted between the ILEC and affiliate, combined with full ownership and control of the affiliate by the ILEC, would make the affiliate a successor or assign of the ILEC. Allegiance notes that the Commission's failure here to consider whether ownership and attribution rules that identify when related companies should be treated as a single company -- or a successor or assign -- for regulatory purposes is a glaring omission.

21-23 The FCC long has recognized the need for stringent safeguards for ILECs' provision of services on an unregulated basis. Here, however, the Commission's proposed structural separation safeguards would permit the affiliate to enjoy many of the benefits of incumbency, and hence should be made more stringent. For example, the FCC should prohibit *any* sharing of facilities, joint marketing, or shared use of trade names. ILECs should be required to offer to all CLECs on a non-discriminatory basis any equipment available for transfer to the affiliate. The Commission should not permit carriers to transfer facilities that have been ordered but not installed, and should limit *any* transfers to a period immediately after the establishment of the affiliate as a legally separate entity. In addition, if an ILEC intends to transfer equipment to its affiliate and leave it in place, the ILEC should be required to publish notice of this intent and allow competitors the opportunity to request that they be able to place equivalent equipment in the central office. These safeguards and any others should remain in effect until after the ILEC has been declared non-dominant. Finally, if the Commission determines to allow ILECs to try to create "separate" affiliates, the Commission should permit the ILEC to provide only a small amount of start-up capital to the affiliate, subject to the requirement that it then transfer ownership of the affiliate directly to its stockholders in the same way that AT&T broke itself into three separate corporations. The new company could then raise additional funding and acquire needed personnel and facilities in the same way as other CLECs.

24 If the Commission adopts its separate affiliate plan, it should require the ILEC to submit a complete plan for establishing the affiliate, including proposed asset transfers, marketing plans, and a capitalization plan, with an opportunity for public

comment.

24-25 Because telecommunications facilities are used for both interstate and intrastate communications, it is not possible for an affiliate to receive a transfer of facilities to be used exclusively for intrastate communications. Because these transferred facilities may be used for interstate communication, the FCC has the authority to preempt state regulation that would be incompatible with its separate affiliate scheme. The Commission should exercise this authority and preempt any state safeguards applicable to an ILEC's advanced services affiliate that are more lenient than federal safeguards.

26-27 Granting interLATA relief to allow access to a node on the Internet backbone would far exceed any of the waivers granted by the D.C. District Court under the AT&T Consent Decree or by the Commission under Section 3(23), and would go beyond the refinement of particular geographical boundaries the District Court granted to recognize particular communities of interest. Essentially, such action would permit BOCs to provide interLATA service that Section 271 proscribes until they have complied with that section, and hence the Commission may not move LATA boundaries for the proposed purposes. In any case, this action is not necessary to provide high-speed access to any regions of the country. When and if there is sufficient demand for provision of high-speed connections to the network, IXCs will do so.

27-28 Allegiance supports the Commission's proposals to establish more rigorous collocation and unbundling requirements, and urges the Commission not to adopt its proposal to permit ILECs to provide advanced services through an unregulated separate affiliate.

3. ALLIANCE FOR PUBLIC TECHNOLOGY ("APT")

1-4 As a non-profit advocacy group for consumers and educational institutions, APT agrees with the basic policy of the NPRM that market forces rather than regulation will best speed delivery of advanced services. The FCC should not handicap ILECs with burdensome UNE regulation, but let them offer advanced services through a separate subsidiary on a virtually deregulated basis just as cable companies are today through high speed access cable modems.

4-11 At the same time, APT believes that the "optional" aspect of the NPRM's advanced services affiliate proposal would tend to create an ILEC advanced service affiliate "in the image of a CLEC" in the sense that, just like a CLEC, an ILEC advanced service affiliate would cream skim business and high density markets and not serve rural, low-income, elderly or other "marginalized" communities. To avoid that result, APT recommends that the FCC mandate that an ILEC establish an advanced services affiliate to cover these communities, and sunset the advanced service affiliate requirement after three years *only* if the ILEC affiliate has established a proven record of providing advanced services to marginalized communities during the three-year

period.

12-13 The FCC should establish a federal/state policy framework for ILEC advanced services similar to the "social contract" approach to cable rate regulation. In effect, the FCC and the states would give an ILEC advanced services affiliate pricing flexibility through a "productivity factor adjustment" to its rate-base if it agreed to extend service to underserved rural areas (citing APT Petition attached at Appendix A, 4-8). APT does not explore in its comments why or how the FCC, in the first instance, would engage in price cap or rate regulation of ILEC advanced services.

4. AMERICA ONLINE

2 The deployment of broadband wireline infrastructures, with their faster transmission speeds and "always-on" network connections, presents a much anticipated opportunity to expand and enhance the profound public interest benefits associated with the development of the Internet. The public interest will be best served, therefore, by a general policy of open and nondiscriminatory access to "last mile" broadband infrastructures deployed by both incumbent LECs and cable operators.

2-3 [I]f the FCC adopts the proposal detailed in the NPRM permitting incumbent LECs to establish a "truly separate" data affiliate or to provide advanced services on an integrated basis, the Commission should adopt safeguards to ensure that the deployment of advanced services continues to be on a reasonable and non-discriminatory basis for independent ISPs so as to foster competition, diversity and consumer choice.

4 Because consumers of cable broadband service do not have the ability to select the Internet service provider of their choice, it is critical to ensure that consumers of incumbent LEC broadband service do have such a choice.

7 The FCC's core non-structural safeguards, currently embodied in the Computer Inquiry/ONA framework, are designed to address the unique risks involved when incumbent LEC-affiliated ISPs compete with independent ISPs. There same risks will continue in the deployment of advanced, broadband services through a separate data affiliate or on an integrated basis, unless and until there is true loop competition in broadband services.

9 To best serve the public interest, the FCC should require that any advanced data service provided by the proposed separate data affiliate be offered on an unbundled, publicly available basis, including the full range of open access and non-discrimination obligations applicable today.

5. AMERICA'S CARRIERS TELECOMMUNICATIONS ASSOCIATION ("ACTA")

3-7 Congress did not give the FCC authority to relieve an ILEC, or its in-region affiliates, successors or assigns, from the Section 251 interconnection and resale obligations. The transfer of any ILEC asset for any period of time – regardless whether it is on a "trial" basis – that is beneficial to the affiliate, including CPNI, brand names, information, or employees, cannot occur without converting the affiliate into a "successor or assign" of the ILEC.

8-13 ILEC advanced services affiliates, if allowed, must be subject to additional safeguards such as filing rates on a tariffed, nondiscriminatory basis.

13-15 ILEC advanced services affiliates should be treated as dominant carriers to prevent anticompetitive abuse.

15-16 Section 272 requires that the ILEC establish a separate affiliate for any interLATA advanced services offered to in-region customers. The FCC should not impose an automatic sunset on such separation rules, but should examine ILEC requests on a case-by-case basis, upon petition by an ILEC affiliate seeking relief from the separation requirement.

16-19 The FCC should adopt pro-competitive safeguards regarding collocation and other issues. Any particular collocation arrangement available at one ILEC facility should be presumptively "technically feasible" at all ILEC premises. An ILEC claiming space exhaustion should be subject to continuing verification to the state commission through submission of floor plans and should allow requesting competitors to tour the LEC premises where space exhaustion is alleged. There should be no restriction on the type of equipment that can be collocated, where it is necessary to provide advanced services, even if the equipment provides for switching functionality. Any advanced services equipment allowed to be transferred from the ILEC to its affiliate should be available on both a nondiscriminatory UNE and resale basis to competitors, upon request.

6. AMERITECH

7 A narrow wireline-based approach to advanced telecommunications capability is inconsistent with the Act. Commission should adopt more flexible treatment of wireline-based services that can make advanced telecommunications capability available to all Americans.

7-8 Policy pitfalls of a narrow wireline-based approach: (1) focusing exclusively on ILECs would set up perverse incentives for other carriers to rely upon the infrastructure deployed by ILECs; (2) this form of distorted competition will reduce

the effectiveness of the marketplace's inherent dynamics by "stacking the deck" in favor of specific technologies, producing an economically inefficient form of competition; and (3) the ILECs' advanced telecommunications capability investment incentives would be diminished if others get access to the infrastructure in an asymmetrical arrangement.

9 Ameritech provides nondiscriminatory access to loops that are capable of transporting high-speed digital signals.

10-11 Commission's finding requiring loop conditioning is consistent with the Local Competition Order. Consistent with Commission's requirement, Ameritech performs, to the extent feasible, conditioning on existing loops necessary to support a request for ADSL or HDSL transmission.

11-12 There are technical and legal limitations on an ILEC's provision of xDSL-compatible loops. Agrees that an ILEC is required to make reasonable modifications to its existing facilities, such as conditioning, to the extent necessary to accommodate interconnection or access to network elements; but under Section 251(c)(3), an ILEC is not required to construct new facilities or make material network rearrangements or changes.

12 Any rule regarding xDSL-compatible loops must recognize that loops over certain lengths and those with certain loop length and gauge combinations are not capable of supporting transmissions in the higher bandwidths used for advanced data services.

13 Agrees that in order to provide an xDSL-based service over a loop passing through a remote terminal, the loop must either be reassigned to a physical copper pair connecting the end user's premises to the central office, or the xDSL portion must terminate at the remote terminal, where it can be converted to a format compatible with digital loop carrier (i.e., through the use of a DSLAM at the remote terminal).

13 Opposes Commission's proposal that ILECs have the burden of proof of demonstrating that it is not technically feasible to provide requesting carriers with xDSL-compatible loops. Commission must clarify that an ILEC has met its burden where it demonstrates that a nondiscriminatory loop assignment and provisioning process is in place that provisions xDSL-compatible loops to its data affiliate and CLECs on a comparable basis.

13 Where feasible, Ameritech offers to provide compatible unbundled loops by using alternate available copper loops.

15 Where facilities permit, Ameritech connects existing copper loop components to provision a loop capable of supporting xDSL-based transmission.

16 Ameritech's OSSs are used to provide unbundled loops, including ADSL and HDSL-compatible loops.

16 Ameritech does not provide direct access to its loop inventory database to its own data subsidiary or to CLECs. Access to ILECs' loop inventory should not be required at this time.

17 Subloop unbundling should continue to be provided on a case-by-case basis, where technically feasible and space permits, including at remote terminals.

18 Subloop unbundling at the remote terminal is not normally necessary or desirable for a CLEC to obtain an xDSL-compatible loop. Subloop unbundling creates severe technical, space availability, operational, and administrative problems.

18 After three years, Ameritech has still not received a specific request for unbundled access to subloop elements. Thus, the demand, potential points of interconnection, applications, and costs of subloop unbundling are still not known.

19 Subloop unbundling, while in some cases technically feasible, is impractical to offer except on a case-by-case basis.

21 When compared to subloop unbundling, Ameritech believes that the most economically efficient and customer-focused means of providing xDSL-compatible loops is to use or find copper-based loops to support a request.

21 It is premature to require spectrum sharing on loops. Spectrum sharing is complex, multi-faceted issue that will require development of new and modified industry standards, administration capabilities, operational procedures, and OSS.

22 Spectrum sharing may adversely impact existing and potential new advanced CPE and voice services. It is premature to mandate spectrum sharing on unbundled loops until the potentially undesirable/unintended adverse impact of that decision on voice services and CPE is understood.

23 The technical, compatibility, service quality, operational and administrative requirements of spectrum sharing must be fully understood before it is mandated.

23 The Commission should address loop spectrum compatibility and interference issues through mandatory standards, practices, and procedures adopted through an industry forum process.

24 The presence of multiple signal formats on the same local loop creates significant risks of interferences.

25 CPE must be manufactured to meet standards that protect against harmful interference and manufacturers must perform appropriate tests.

26 Commission should support national standards adopted through an open industry

forum process—spectrum management standards should be based on proposals developed by T1E1.

27 The Commission should permit, but not require, carriers to share spectrum over the same loop.

28 Local loop facilities and support systems were designed for integrated operation and control by a single carrier. As a result, each existing procedure, practice, and OSS that supports local loop installation, operation, maintenance, and billing must be reviewed and possibly revamped before loop sharing can be seriously considered.

29 It is premature for the Commission to mandate that ILECs permit CLECs to use higher frequencies on the same local loops the ILEC uses to provide voice grade service.

31 Commission should not prohibit spectrum sharing arrangements where the two carriers have entered into an agreement, but it is premature to mandate such arrangements at this time.

32 To the extent additional collocation measures are needed to promote the deployment of advanced services, such details should be pursued through negotiations or arbitration.

32 The language and structure of the Act clearly demonstrate that collocation measures should be determined through negotiation and arbitration, not federal regulation. Also, the Commission does not appear to have authority to issue collocation rules, except to the extent it determines xDSL technology is an interstate (or jurisdictionally mixed) offering.

37-42 Ameritech already makes options available that reasonably minimize carriers' collocation costs.

- Ameritech currently permits the placement, in collocation space in its central offices, of traditional multiplexers, DLC systems, DSLAMs , and remote monitoring equipment to facilitate the competitive provision of xDSL services over its loops.

- Ameritech allows collocating carriers to connect to the equipment of other collocating carriers. Collocating carriers ma interconnect with each other in the same office and even when in different offices (using their own facilities or unbundled local transport). When in the same office, collocating carriers in the same general proximity may connect to each other through a coaxial cable or fiber—subject only to condition that Ameritech be notified and that the connection utilize existing cable racking in an appropriate manner. In all other cases, collocating carriers can interconnect to each other utilizing Ameritech's cross-connection service for interconnection (ACCSI).

- Ameritech requires NEBS Level, 2, and 3 compliance for both Ameritech equipment and for carrier equipment collocated on Ameritech premises which interconnects with Ameritech's network. To the extent the collocated equipment does not interconnect with Ameritech's network, then only applicable industry-approved safety and electrical interference standards would apply.

42 Ameritech does not require that collocation space be "caged." Whether cages are installed or not, in those situations involving nonpartitioned space without separate keyed entrances, ILECs should be allowed to require escorts for CLEC technicians.

43 Ameritech has agreed to consider requests for physical collocation space smaller than the standard 100 square feet.

43 Ameritech is willing to explore the possibility of shared arrangements in the context of negotiated Section 252 agreements. There is a danger that, if the Commission were to require shared arrangements without restrictions, with collocation priced at long-run incremental cost rates, an entity might request collocation primarily to provide collocation to other carriers on a resale basis in an ILEC central offices.

44 In the normal course of business, Ameritech routinely removes equipment that is not used and useful from its central office space.

44 Ameritech does not include a "first-in penalty" in its rate for collocation. Rather, its rates are determined using estimated demand and spreading the cost to condition the space over the anticipated demand, i.e., Ameritech's rates are averaged and recover the central office build-out space conditioning cost over time from multiple customers.

45 Ameritech allows carriers to begin collocation even prior to state certification or an interconnection agreement. Ameritech is aware of no specific complaints to any regulatory body regarding any alleged delay or failure to meet a negotiated due date with respect to any of its physical collocation arrangements.

46 Does not object to presenting its case to State commissions when space for physical collocation is not available, but Ameritech prefers to work with the requesting carrier by reviewing with the carrier floor plan drawings showing the lack of available physical space—this should suffice in lieu of a tour of the premises.

47 Reports proposed by FCC would be extremely cumbersome. Also, the report may be of little lasting value since the information would change frequently.

47 Ameritech has space reservation policy that guarantees that it is treated no less favorably than unaffiliated entities when it comes to the reservation of space in Ameritech central offices. Policy is included in federal and state tariffs.

48 Commission should not place unreasonable restrictions on collocation by an advanced

services affiliate. It would result in needlessly preventing affiliate collocation in offices in which no other provider may have an interest.

49-53 Structural separation is not a prerequisite to non-ILEC status for purposes of Section 251(c). Although Commission has power to impose structural separation, onerous structural separation is not required for an affiliate not to be an ILEC.

- Unless the data affiliate meets the statutory conditions of Section 251(h)(1)(A), it is not an ILEC.

- In order to become a successor or assign, the data affiliate should replace its ILEC's local exchange data operations through transfer of relevant network facilities such that the ILEC no longer offers the relevant services and network elements in the area. Where no such transfer has occurred, the data affiliate cannot be an ILEC.

- A data affiliate of an ILEC should be declared to be comparable to an ILEC where the Commission finds that the affiliate has a dominant position in the relevant market, and has in some way replaced the ILEC's operations, as the incumbent provider of local exchange data services and network elements.

- In sum, it is highly unlikely that in most instances a data affiliate will meet the statutory qualifications necessary for it to be an ILEC subject to the obligations of Section 251(c).

54 Commission should clarify that its data subsidiary requirements are based on Section 271. Commission should clarify that the Section 272 model is intended to apply to ILEC provision of advanced telecommunications capabilities.

54-55 Commission should clarify that the rules permit ILECs to jointly market their own local exchange service offerings with services offered by their data affiliates without violating the general nondiscrimination provisions of the rules. For purposes of defining the scope of permissible joint marketing activities, the Commission should rely upon its earlier assessment of joint BOC marketing of interLATA services under Section 272.

55-56 ILECs should be permitted to perform operations, installation and maintenance of equipment and facilities owned by their data affiliates. Commission should clarify that an ILEC's data affiliate is entitled to no worse treatment than its competitors who elect to use ILEC collocation space.

57 The transfer of limited ILEC facilities used by a data affiliate to provided advanced telecommunications capability should not render the affiliate a successor or assign of the ILEC for purposes of Section 252(h). Supports the Commission's tentative conclusion that a de minimis exception should apply to transfers of ILEC facilities used to provide advanced services. This exception should apply to DSLAMs, packet switches, and transport facilities, and not to other network elements, such as loops.

58 An advanced services affiliate should be permitted to provide both data and interLATA services. A contrary requirement would unfairly deny ILEC affiliates the benefits of integrated data/interLATA operations which are readily available to their competitors.

60 The separate data subsidiary requirements should sunset upon widespread deployment of advanced telecommunications capability.

61 Commission should grant BOCs targeted interLATA relief to facilitate ubiquitous deployment of advanced telecommunications capability.

62-64 InterLATA relief is necessary to encourage deployment of advanced telecommunications capability. One of the ways in which LATA boundaries discourage the BOC investment in advanced telecommunications capability is by forcing the BOCs to deploy redundant facilities in every LATA in which they seek to provide advanced telecommunications capability services.

65 Ameritech could substantially reduce the cost of providing—and hence the prices paid for—advanced data services to customers with offices in multiple LATAs if it could aggregate such customers' traffic across existing LATA boundaries and provide cost-effective end-to-end transport.

66 InterLATA prohibition not only limits Ameritech's ability to compete effectively for multiLATA customers' advanced telecommunications capability business based on price, it also undermines its ability to differentiate its advanced telecommunications capability service offerings based on such non-price factors as customer service and service quality.

67 Competitive disadvantages imposed on Ameritech by the interLATA prohibition is not merely hypothetical—Ameritech routinely loses bids to serve customers with interLATA data needs.

69 Commission must recognize that Ameritech's inability to compete effectively for the advanced telecommunications capability business of multiLATA customers seriously limits Ameritech's ability to defray the investment costs of deploying advanced telecommunications capability ubiquitously throughout its network.

69 Commission should modify LATA boundaries to permit Ameritech (1) to provide interLATA transport within a state for data service provided too customers with multiple locations in that state; (2) to concentrate data traffic across existing LATA boundaries and transport it to one ATM switch; and (3) to provide transport from an ATM switch to the closest NAP outside the LATA in which the switch is located, even if the NAP is in a different state.

71 The only process that would afford the BOCs meaningful and effective LATA relief

is one that can avoid delays. Best approach would be to establish an objective test under which a BOC could obtain state-wide LATA relief for specified limited purposes. A BOC should be granted the limited interLATA relief proposed by Ameritech if the BOC demonstrates that (1) it complies with the currently applicable state and federal rules relating to the availability of ADSL, HDSL, and ISDN compatible loops; (2) complies with the currently applicable state and federal rules regarding collocation; and (3) provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission.

72 Rather than using Section 251(c) relief as the carrot to incent the BOCs to adopt its separation framework, FCC should use limited LATA relief to that end.

72-75 Ameritech's request for targeted LATA relief is consistent with the Commission's LATA boundary modification standards. In evaluating such requests, the Commission has balanced the need for the proposed modification against the potential harm from BOC activity if the request is granted. The Commission has also considered whether the proposed modification will have a significant deleterious effect on the BOC's incentive to open its local market pursuant to Section 271. Ameritech's targeted LATA boundary modifications satisfy these criteria (i.e., modification is essential, no harm to competition, will not eviscerate Section 271, etc.).

75 Limited LATA relief proposed is no substitute for Section 271 authority because Ameritech could still transport data traffic only within the redefined LATA boundaries. Also, the limited interLATA relief would not enable Ameritech to provide interLATA circuit-switched voice grade services to its customers.

7. ASSOCIATION FOR LOCAL TELECOMMUNICATION SERVICES ("ALTS")

ii Creation of unregulated in-region affiliates will harm competition unless the Commission identifies all the features, services and facilities that are essential to non-affiliated competitors, and requires that they remain with the incumbent.

ii The history of separate subsidiaries in other situations fully demonstrates that such regimes cannot work unless rules are fully accompanied by vigorous enforcement.

iii In determining which features, services and facilities of the incumbent are essential to non-affiliated competitors, the Commission should not simply assume that loops are the sole source of incumbent market power.

4 The *Advanced Wireline Services Order*'s legal interpretation of section 251(h), and its reliance upon the *Non-Accounting Safeguard Order*, are entirely unfounded.

4 Section 251(h) does not authorize the Commission to create ILEC corporate subsidiaries that are immune from the requirements of Section 251(c).

5 The Commission has concluded that section 251(h) dictates when the statute *imposes* incumbent LEC regulation on LECs that do not currently bear that burden; it is not a device by which to *relieve* incumbent LECs of their regulatory duties through the guise of a corporate affiliate. Clearly, the *Advanced Wireline Services Order* would turn this ruling on its head by making section 251(h) into a source of forbearance authority.

5 Indeed, given Ameritech's claims that no meaningful distinction can be made between data and voice, Ameritech is effectively claiming the freedom to place all new technology, as well as replacements of existing technology, in an affiliate.

9 Section 272 necessarily reflects Congress' conclusions about the manner in which an RBOC that has *already* substantially complied with section 251 should enter the mature, highly competitive long distance industry.

12 ILECs currently lack appreciable economic incentives to deploy Advanced Telecommunications Services in the absence of competitive pressures.

12 It is quite unlikely incumbents will be motivated to roll out data services faster if pro-competitive protections for advanced telecommunications services are stripped by means of an in-region affiliate scheme.

14 If separate data subsidiaries are truly as "lethal" to innovation as the incumbents claim, they can hardly be justified on the ground that they will stimulate innovation in advanced telecommunications services.

15 The *Computer III* controversy also provides insight into the Commission's on-going difficulties in enforcing its own requirements.

16 Bell Atlantic's IPRS is currently being provisioned illegally by Bell Atlantic because it is not offered via a section 272 subsidiary, among other matters. The Commission's manifest difficulty in enforcing its current rules for information services provides ample demonstration that taking on additional responsibilities in this regard may not turn out as planned.

20 Given the huge increases anticipated for data telecommunications compared to voice traffic, there is no question that incumbents would have the same incentives and ability to cheat on separate subsidiary rules remarkably similar to those that so alarmed DOJ and the MFJ court.

21 However, the *HAI Broadband Paper* proposes that outside ownership be "sufficient to trigger SEC financial disclosure rules" (at 50), and CLECs supporting the separate subsidiary approach have argued against majority incumbent ownership.

21-22 Indeed, to the extent that charging its own affiliate unreasonably high prices helps

justify applying the same rates to unaffiliated providers (which it clearly should not), the incumbent has yet an additional incentive to make UNEs as expensive as possible.

22 In-region affiliates should be required to raise capital in the same fashion as ordinary CLECs.

23 One way to minimize the incentive to over-price the UNEs provided to an affiliate by an incumbent is to require that it: (1) obtain UNEs through an approved tariff or interconnection agreement; or (2) demonstrate that the UNEs it acquires from the incumbent comply fully with the statutory standard by publicly filing appropriate cost evidence thirty days prior to the commencement of provisioning.

23-24 If an affiliate does acquire overpriced UNEs from its parent, that fact could possibly be detected by requiring the affiliate to show that its prices covers the costs of all of its inputs, including UNEs purchased from its parent.

25 Affiliates should bear a high burden of proof when attempting to demonstrate that special terms and conditions are justified by volume or non-standard provisioning.

25 The Commission should order that collocation by an affiliate be only physical, not virtual.

25 In the event virtual collocation is made available to in-region affiliates, contrary to ALTS' recommendation, such virtual collocation should first be made publicly available to all other competitors for at least 30 days prior to the time when it could first be ordered by the affiliate.

25 Terms and conditions for any and all transactions between the affiliate and incumbent must either be tariffed, or contained in an approved interconnection agreement.

26 ILEC-affiliate transactions or transfers are not allowed except via an approved tariff or interconnection agreement. To the extent the Commission does approve any transfers outside the context of a tariff or agreement, the potential transfer should first be announced and made available to the affiliate's competitors at least 30 days prior to the affiliate's utilization.

26 ALTS repeats its view that section 251(h) is a flat declaration that transfer to an affiliate convert the affiliate into a successor fully bound by section 251(c). Nothing in the language of section 251(h) limits its application only to bottleneck facilities of the incumbent, nor is there any *de minimis* language.

27-28 ALTS proposes that any tariff and interconnection agreements used by an affiliate should first be available to non-affiliated at least 30 days prior to the affiliate's utilization. This period mitigates the "advance warning" that an affiliate is likely to enjoy, and permit competitors to review any tariffs and agreements for their compliance with applicable regulatory requirements. This same philosophy requires

that an affiliate obtain advance approval of a compliance plan detailing its course of interaction with its owner prior to commencing any operation.

28 The compliance plan filed by affiliates should detail the level of affiliate financial support (which should be limited to the level of analogous venture capital), and be required to file and support any changes to that plan if additional cash infusions are needed.

29 To the extent that current limits do exist – such as CPNI and network interface disclosure requirements – ALTS believes these need to be reviewed and enhanced. For example, currently CPNI limits do not appear to apply clearly to an in-region affiliate.

29 Transfer of Loop Inventory Information. . . . The Commission should insure that the affiliate does not have special access to this information.

30 Any asset transfer converts an in-region affiliate into a successor of the incumbent under section 251(h).

30 The HAI Broadband Paper sets out a basic rule: ". . . the parent should retain all the functionality required to provide unbundled broadband elements to the competitors of the subsidiary" (at 52).

30 There is no meaningful distinction between an outright transfer of assets to an affiliate, or the acquisition of facilities by the affiliate.

30 Permitting an affiliate to escape the requirements of section 251(c) by "acquiring" assets that are part of the ordinary evolution of the network would gut the core the of the Act, while protecting no legitimate policy.

31 The Commission must still require the incumbent to acquire and install all elements of the local exchange network that are essential to the competitive provisioning of broadband services (*HAI Broadband Paper* at 47).

31 Concerning the *de minimis* transfer exemption for network elements used to provide advanced services proposed in the *Advanced Wireline Services Order*, ALTS wishes to point out there is no pragmatic need for any such device, even if it were legal (at ¶¶ 106-109).

32 Incumbents should be required to staff affiliates through outside hires, just like CLECs.

33 Affiliates should be prohibited from marketing via incumbent brand names.

33 Any transfers of intangible assets of the incumbent, such as software, copyrights, etc., such be made available to all purchases on a non-discriminatory basis.

34 The Commission should conclude it is desirable to limit forbearance from resale to only those serving areas where a certain level of competitive broadband loops are being made available.

35 The Congress recognized the danger in allowing the BOCs to provide services in competition with interLATA carriers and required strict compliance with a checklist of items prior to entering the interLATA market. ILEC provision of broadband service presents a similar problem. Therefore, the Commission is proposing for broadband services a market model that the Congress determined was too risky for long distance.

36-37 Beyond the potential price squeeze for ISPs, however, is the disturbing fact that the potential price squeeze for advanced wireline service CLEC competitors is every bit as great, but goes totally unmentioned in the *Advanced Wireline Services Order*! Perhaps this was an oversight, but ALTS wishes to now emphasize that the price squeeze is just as great for CLECs as for ISPs (if not greater), and requires that the Commission demand adequate cost support for all the reasons pointed out by NorthPoint.

37 ALTS proposes that no sunset provisions be adopted at this time.

38-39 As explained in the *HAI Broadband Paper*, the history of rule enforcement is a painful trail of waiver requests, confusion, and naked defiance (at 67-69). Effective competition needs consistent rule enforcement via effective (i.e., ILEC behavior-altering) agency-enforced penalties. Such penalties could include further divestiture and quarantines on any offers of broadband services from the incumbent or its affiliate (*id.* At 67-69).

39 Almost two years ago in a petition for reconsideration of the *local Competition Order*, ALTS asked the Commission to rule that it is a violation of the statutory duty to negotiate in good faith for an incumbent to refuse to be subject to reasonable commercial enforcement mechanisms (ALTS Petition for Reconsideration filed September 30, 1996, at 23-29).

42 States should have the authority to define additional UNEs that are combinations of existing and new UNEs. The simplest way to cure the problem is to permit states to designate certain combinations of UNEs as a single UNE that must be provided intact by ILECs.

42 As proposed by NTIA: "if (1) a state commission has ordered a ILEC to provide a particular collocation arrangement or (2) an ILEC has voluntarily offered to provide such an arrangement, there would be a rebuttable presumption that it would be technically feasible for ILECs in any other part of the country to make available the same arrangement" (NTIA *ex parte* dated July 17, 1998).

42 ILECs should be obligated to negotiate in good faith pursuant to section 251(c)(1) "self-enforcing" mechanisms, including targeted performance measurements and penalties, that will help implement ILEC compliance with their broadband

obligations.

42-43 ILECs seeking to create an in-region affiliate should first obtain approval from the Commission and applicable states of a compliance plan that fully explains the affiliates operations, including capitalization, transfers of assets, employees, brand names, intangible property, etc.

43 ILECs (or their affiliates, where appropriate) should be obligated to demonstrate compliance with their broadband obligations (including resale, ONA unbundling, UNE provisioning, interconnection, and all imputation requirements), prior to approval of any tariff for advanced wireline services.

43 ALTS supports the *Advanced Wireline Services Order*'s proposal that ILECs not be allowed to impose restrictions of any kind on the kind of equipment that can be collocated by a carrier (at ¶ 129).

45 Similarly, there should be no "stamps of approval" required for collocated equipment, other than Network Equipment and Building Specifications ("NEBS") level 1 compliance (but only to extent an ILEC complies with this standard itself).

46 The Commission needs to order ILECs to provide any and all kinds of cross-connects in collocated space, including collocated space shared among CLECs.

46 Finally, the *Advanced Wireline Services Order* proposes not to require collocation of equipment used to provide enhanced services (at ¶ 132). This restriction seems appropriate given than only telecommunications carriers, and not information service providers, are entitled to request collocation in the first place.

52 ALTS urges the adoption of NTIA's proposal that all state collocation determinations should be presumptively enforceable in any other jurisdiction. Thus, New York collocation rules could be applied in Illinois at a CLEC's option, unless the Illinois incumbent could somehow distinguish its particular situation.

53 The NorthPoint proposal should form the basis for minimum national rules to conserve collocation space.

54 Include a "fresh look" mechanism whereby agreements negotiated prior to the rulemakings effective date can be reopened and negotiated subject to its provisions.

54 The *HAI Broadband Paper* identifies the UNEs needed in order to provide facilities-based competitive broadband services over what they refer to as the Broadband Local Exchange Network.

57 The rules the Commission adopts should not be narrowly-constructed to apply to xDSL only, but should deal with the Broadband Local Exchange Network generally (at 74).

57 The ILECs must provide an end-to-end broadband capability that extends from the

premises to the Points of Interconnection ("POIs") of CLECs (at 75).

57 There should be no differentiation between the regulated entity and the separate subsidiary in terms of the former providing unbundled narrowband network elements and the latter adding bottleneck broadband elements such as DSLAMs (at 78).

57 ILECs should be required to provide all unbundled components of their broadband networks to CLECs as UNEs (at 81).

57 In addition to requiring the provisioning of UNEs, the unbundling of the broadband network can also be accomplished through specifications of particular access configurations (at 85).

58 CLECs should be able to collocate transmission equipment and broadband switches in the CO, switch hub, or both, depending of the location of the ILEC broadband switch (at 87).

58 ILEC broadband offerings should not be allowed to bind broadband access to a particular ISP, thereby lessening or eliminating the role of the CLECs in carrying Internet traffic. Connections to ISPs should be switched connections (at 88).

58 To the extent the broadband access technology can jointly support voice and broadband data services, as is the case with ADSL, subscribers should be able to separately designate which entity provides its voice and broadband data service. Given that end user request, CLECs should not be forced into an inefficient arrangement for providing either or both services (at 89).

58 Regulations should promote non-discriminatory provision of network access by the ILECs to the CLECs, including timely development of interface specifications (at 90).

58 One of the Commission's central tasks in encouraging broadband competition is to identify the various needs of CLECs in this marketplace, and then make sure that all these needs are addressed without anointing one particular entry strategy as the only available option.

59 ILECs presumably are already creating inventories of data-capable cooper loops that can support various forms of DSL (*HAI Broadband Paper* at 77-79). These inventories, as well as the particular testing functions, need to be made available to CLECs as individual UNEs on a real-time basis to assure full parity of loop access.

61 First, the Commission should not adopt any "first in, always in" rule (described under the more mellow term of "riparian rights" in the *Advanced Wireline Services Order*.

61-62 Second, the Commission should adopt a rule that *no* ILEC is permitted to exclude non-affiliated CLECs from placing DSL customers within loop plant unless that ILEC has also, at a minimum: (1) publicly announced the rules governing the deployment of xDSL technologies in its loop plant; and (2) applied those rules to its

own deployment.

62 The enforcement of robust interface standards will speed the eventual adoption of uniform interface standards, with resulting reductions in prices and increased consumer satisfaction.

64 Even if some ILECs choose to upgrade their DLC plant to support xDSL, they may intentionally select "closed" systems that effectively preclude CLECs from gaining access to the DLC terminals at the remote terminal locations (*HAI Broadband Paper* at 40). Such a strategy might be disguised by sizing RTs, and their associated power and environmental controls, in such a way as to effectively preclude access by multiple carriers.

64 In situations where the ILEC's own DLC choices preclude the provisioning of xDSL transport UNEs, the ILEC should be required to provide the *full service* to the CLEC, and charge a price only for the equivalent of loop transport.

67 Concerning NTIA's proposal that the Commission could determine that section 251(c) is implemented on a service-by-service basis, ALTS respectfully contends that such an interpretation is inconsistent with the statute and sound policy. . . . Thus the Act itself denies authority for partial section 251(c) forbearance.

67 ALTS agrees with the *Advanced Wireline Service Order* that "[t]o the extent that advanced services are local exchange services, they are subject to the resale provisions of section 251(c)(4)" (at ¶ 61; *see also* ¶ 84).

69-70 By recognizing that section 10(d) controls any effort to forbear from enforcing or otherwise circumvent the requirements of section 271, the *Minnesota LATA Order* clearly bars the Commission from issuing any forbearance of section 271.

8. AT&T

6 AT&T agrees that an affiliate that is *sufficiently separate* from an ILEC parent could in some circumstances escape treatment as a "successor or assign" of the ILEC under § 251(h)(1). However, the separation requirements and safeguards the NPRM proposes are not adequate to permit an advanced services affiliate to be deemed a non-ILEC.

6 Section 251(h)(1)'s definition of ILEC to include "successors or assigns" should be given its naturally broad meaning so as to effectuate the market-opening goals of Sections 251 and 252.

6 No reasonable reading of the plain language of § 251(h) can exclude from its scope a 100%-owned subsidiary of an ILEC (or an ILEC's parent) that provides local exchange access services within the ILEC's territory.

7-8 As the Commission already has found, there is no legal or technical basis to

distinguish between local exchange or exchange access services and "advanced services," and the technologies used for advanced services are fully capable of transmitting voice communications. Thus, the Commission's determination of the separation requirements necessary to ensure a "truly separate" affiliate cannot rest on the fact that the affiliate provides advanced services rather than (or in addition to) other forms of local exchange and exchange access. Instead, the Commission must use the same rigorous standards that would apply if an ILEC sought to establish an affiliate exempted from § 251(c) simply for the purpose of providing ordinary local POTS service within the ILEC's monopoly service territory.

8 Section 272's separation requirements are necessary, but not sufficient, to ensure that an ILEC advanced services affiliate is "truly separate"

8 While the § restrictions represent *necessary* conditions that any ILEC affiliate should meet in order to fall outside the ambit of § 251(h), those requirements are by no means *sufficient* to ensure separation so complete that an advanced services affiliate functions "like any other competitive LEC," and derives no "unfair advantages from the incumbent LEC." First, § 272 simply was not intended to outline the criteria necessary to escape treatment as an ILEC. Second, even to the extent that § 272 is pertinent to the NPRM's inquiry, that section was intended to permit a BOC to operate a separate affiliate only *after* a BOC had opened its local market to competition by fully satisfying the rigorous requirements of § 271.

11 The Commission's § 272 rules are largely untested and have been openly flouted by the BOCs.

12-13 The BOCs similarly have refused to comply with the unequivocal requirements imposed in the *Accounting Safeguards Order* – and reiterated in the *Ameritech Michigan Order* – that they disclose all transactions with their affiliates and that they provide detailed information about those dealings.

17 In order to achieve the NPRM's goal of ensuring that advanced services affiliates are "truly separate," the Commission must provide significantly stronger safeguards than those the NPRM proposes.

18 The Commission should clarify that ILECs must obtain approval *before* they may provide advanced services through a separate affiliate that is not subject to § 251(c).

20 The Commission should require a meaningful quantum of outside ownership of ILEC advanced services affiliates.

22-23 *First*, the Commission should make clear that the disclosure obligations established in this proceeding are effective as of the date that an ILEC or its parents identifies an entity as its intended "advanced services affiliate," not as of the date that affiliate is actually certified by the Commission as an advanced services affiliate or actually begins operating as a non-ILEC.

23 *Second*, the Commission should require disclosure of all transactions between an

ILEC and its advanced services affiliate from the date the affiliate was incorporated or established, not merely from the effective date of any order issued in this proceeding.

23 *Third*, the Commission should specify that transaction disclosures must include, at a minimum, the rates, terms, conditions, and valuation methods employed by the ILEC and its affiliate, so that the Commission and other parties can meaningfully evaluate them.

23 *Fourth*, the Commission should incorporate into an required disclosures a provision modeled on § 272(e), which requires that BOCs not discriminate between their affiliates and other entities in the provisioning process. In order to implement such a requirement, the Commission should require that ILECs provide performance measurements sufficient to allow CLECs to evaluate their compliance with this nondiscrimination requirement.

25 The same separation requirements should be applied to all ILECs and their affiliates, regardless of their size.

26 The separation requirements should not be subject to an automatic sunset provision.

28 An ILEC advanced services affiliate should be barred from providing service via resale.

29 Because the affiliate's ILEC parent has strong incentives to discourage UNE-based competition, the affiliate will naturally and inevitably elect to pursue a resale-based strategy. Further, both the monies that an affiliate pays an ILEC for resold services and the funds that the affiliate takes in by selling its own services at retail flow to the same bottom line: that of the ILEC or its parent company. . . . In short, resale presents the ILEC with the opportunity to engage in a classic price squeeze, because it has bottleneck control over essential inputs to advanced telecommunications services. . . . Indeed, the ability to resell ILEC services through an advanced services affiliate would provide an ILEC a much more powerful means of engaging in a price squeeze than if it provided advanced services itself.

30 Permitting an advanced services affiliate to utilize UNEs obtained from its affiliated ILEC also is highly unlikely to achieve the NPRM's aims to promote competition. As a preliminary matter, UNEs present essentially the same opportunities for a price-squeeze as does resale, because an ILEC affiliate will be indifferent to the price of UNE inputs and need not earn a reasonable profit on the UNE-based services it sells.

30-31 ILECs have sought to implement xDSL services only when they were directly threatened by a competitor that could offer broadband services over alternative facilities, such as cable modems and wireless technologies. The NPRM's affiliate proposal will not give ILECs any additional impetus to make UNEs available to their competitors. Instead, that goal can best be accomplished by: (i) encouraging the rapid deployment of alternatives to ILEC facilities by avoiding unnecessary regulation of carriers deploying broadband technologies that are not dependent on

existing local loops; and (ii) strictly enforcing the unbundling and other requirements that Congress imposed on ILECs in § 251(c).

31 Advanced services affiliates should be prohibited from entering into virtual collocation arrangements with affiliated ILECs.

33 Transfers of advanced services facilities, like transfers of any other unbundled network element, render an affiliate an "assign" of the ILEC.

33-34 The Commission's prior orders make clear that *all* such transfers, without exception, will cause the affiliate to be deemed an assign, making such facilities subject to § 251(c). Moreover, as the Commission already has found, it is without authority to forbear from enforcing this rule, through the creation of exceptions or otherwise. Allowing so-called *de minimis* transfers would serve no purpose other than to grant a windfall to ILECs.

36 There is simply no reasoned basis to suggest that ILEC transfers to advanced services affiliates should somehow be made exempt from this nondiscrimination requirement by permitting an ILEC to favor its affiliate by locking out all other potential purchasers.

36 Finally, if the Commission does allow ILECs to "transfer" facilities to their affiliates, ILEC affiliates should not be permitted merely to leave existing advanced services equipment in place on ILECs' premises, but should be required to establish collocation arrangements on the same terms as CLECs.

37 CLECs must receive the same intellectual property rights as ILEC affiliates for purposes of making use of UNEs.

37 The Commission should make clear in this proceeding that, insofar as an ILEC advanced services obtains the right to access intellectual property embedded in a UNE, CLECs necessarily must be able to obtain that UNE on the same terms and conditions.

38 The Commission should require that before an ILEC advanced services affiliate may purchase or use any ILEC UNE, the ILEC must warrant that CLECs can use the intellectual property associated with those UNEs on precisely the same terms and conditions as its affiliate.

41 *First*, the Commission should supplement its current loop definition with three types of loops that ILECs must unbundle upon request: a basic loop, an xDSL capable or, and an xDSL equipped loop.

42 *Second*, as detailed below, the Commission should find that xDSL loops presumptively can support a range of data transmission speeds when a CLEC employs a given xDSL technology on a unbundled xDSL capable or xDSL equipped loop.

42 *Third,* the Commission should expand its existing OSS rules to ensure that the information necessary for carriers to determine whether or not a particular loop can support a specified advanced data service is made available to competitive and incumbent LECs on a nondiscriminatory basis. Moreover, to increase the likelihood that ILECs will unbundle loops on a nondiscriminatory basis, the Commission should require them to collect and disclose disaggregated comparative performance data.

43 *Fourth,* in order further to address the potential for ILECs to use spectrum management claims to forestall competition, the Commission should convene a forum to aid the development of industry standards based on the input of all industry participants.

43 The Commission should also require ILECs to disclose periodically, with respect to each binder, every rejection of, or condition imposed on, an entrant's provision of data services, the reason for the rejection or condition, and the number of loops in that binder which the incumbent or its affiliate uses to provide data services, together with the service initiation date for each such loop.

43 *Finally,* the Commission should clarify its existing rules to prohibit an ILEC from using a DLC or other remote terminal configuration as sufficient justification for denying a CLEC access to any unbundled loop. Specifically, the Commission should find that when DLC is deployed in a remote terminal, it is technically feasible to unbundle (i) an xDSL equipped loop when a DSLAM is also deployed in the remote terminal, (ii) an xDSL capable "home run" loop, and (iii) a basic, voice-grade loop. The Commission further should conclude that it is technically feasible for a CLEC to interconnect at a remote terminal using either fiber or copper transmission equipment.

51 Specifically, the Commission should find that certain loop configurations presumptively can support certain minimum data transmission speeds when a LEC employs a given technology on a unbundled loop.

55 Pursuant to the Act's nondiscrimination requirement, the Commission should require incumbents to allow CLECs to query the incumbents' loop databases to ascertain the availability and characteristics of voice-grade, xDSL capable, and xDSL equipped loops. If the incumbent does not electronically maintain necessary loop characteristic information such as wire gauge, loop length, presence and type of equipment that might interfere with advanced services, presence and type of equipment to facilitate the provision of advanced services, and pre-qualification criteria and data, CLECs must have nondiscriminatory access to the ILEC's non-electronic support.

56 Once the appropriate loop plant has been identified, the CLEC also must be afforded the right to reserve the loop and subsequently order the desired configuration on a non-discriminatory basis – *i.e.*, through efficient electronic interfaces and OSS ordering systems.

56 Finally, to promote compliance with these basis requirements of nondiscrimination, the Commission should require ILECs to collect and disclose disaggregated

comparative performance data.

60 ILECs all too easily could transform their authority to "protect" the local networks into an anticompetitive tools to undermine entrants.

60 The Commission therefore should convent a forum to develop nondiscriminatory spectrum management standards. These standards should address (i) interference and (ii) the process for administering loops (including how assignments are made within cables) among ILECs, ILEC affiliates, and CLECs.

61 To complement these standards, the Commission should establish a process for speedy resolution of disputes relating to spectrum management or the application of loop assignment procedures.

61 Pending the development of industry standards, the Commission should not allow ILECs to exercise unfettered control over spectrum management decisions.

62-63 Absent technical limitations, then, the Commission should take the next step and find that the features, functions, and capabilities that pass with "ownership" of the loop can be leased to other service providers.

63 The Commission should reconfirm its previous finding that one carrier should not be permitted to offer a data or voice service over another carrier's loop without the loop owner's authorization.

66-67 The Commission should reiterate in this proceeding that ILECs cannot use remote terminal deployment of transmission enhancing or multiplexing equipment to justify limits on loop functionality or refusals to deliver unbundled loops.

67 The Commission also should clarify that unbundling xDSL equipped loops is technically feasible even where equipment providing DSLAM-type functionality is deployed in a remote terminal and then subsequently multiplexed onto separate channels (data and voice) of a transmission system carrying the communications back to the central office.

69 The Commission should make clear that, regardless of the incumbent's preferences, any method of provisioning advanced services, voice service, or both on a loop passing through a remote terminal (or any other loop configuration) made available to an ILEC (or its affiliate) must be made available to CLECs in the same time interval and under the same terms and conditions.

69-70 In addition, if the CLEC so desires, it should be permitted to interconnect at or near the remote terminal, through either fiber or copper transmission cables, and install its own transmission enhancing equipment (such as DSLAM functionality, DLC equipment, or both). Indeed, loop "hiding" is of great concern when the ILEC's separate affiliate deploys a DSLAM in the remote terminal.

70-71 The Commission must establish strict nondiscrimination rules regarding remote

terminal collocation. *First*, because space is at a premium, the Commission should find that "cageless" collocation is the only practical solution. Indeed, most remote terminals could not accommodate a cage. *Second*, the ILEC (or its separate affiliate) should be required to remove any obsolete or out-of-service equipment from its remote terminals in order to maximize the available space. *See infra* Section III.E. *Third*, the Commission should consider limiting an ILEC's separate affiliate use of remote terminal space to 25% of the available space or a percentage equal to that afforded other requesting CLECs if more than three CLECs have space requests pending.

72 Reform of the Commission's collocation policies will not only promote the development of advanced services, but also will help stimulate local competition generally.

72 AT&T agrees with the broad principle that competition for advanced services can be enhanced if the Commission adopts additional national standards that can be used to establish a "floor" on collocation requirements, which standards may be improved upon (but not diminished) by the states.

73 The Commission should require, as a minimum standard, that any collocation arrangements processes offered by any ILEC are presumed to be feasible for any other similarly situated ILEC, absent a clear showing that the practices being followed by the other ILEC are not possible in the second ILEC's offices.

77 It would be appropriate as a first step for the Commission to adopt a rule that expressly permits collocators to place RSMs in collocation arrangements, and that prohibits any limitations on the use of the RSM's capabilities.

77 AT&T similarly recommends adoption of a Commission rule permitting the collocation equipment used and useful for advanced services, such as packet switching devices.

78 The Commission should make clear that a CLEC may collocate equipment that conforms to NEBS safety standards, irrespective of whether it also meets NEBs performance reliability standards, or whether the ILEC happens to use that equipment itself. An ILEC should also permit a collocator to collocate equipment that is not compliant with applicable NEBs safety standards if it is used by the incumbent, its affiliate, or in any other collocation arrangement in the ILEC's network. Finally, if the equipment is not NEBS-compliant and is not already being used by the ILEC, its affiliate or another collocator, placement in the ILEC central office should still be permitted, provided that the CLEC demonstrates to the ILEC that the equipment will not cause a significant risk of harm to interconnected networks or ILEC personnel.

79 ILECs should not be permitted to require use of individual collocation cages.

82 ILEC "POT" bay requirements should be abolished.

83 The shared cage model has a number of advantages over the single cage model.

85 The most promising alternative suggested in the NPRM is the option of "cageless collocation."

88 The Commission should require incumbents to remove obsolete or out-of-service equipment and non-network related functions that are using up scarce space in ILEC central office buildings. The Commission should also hold that ILECs are not permitted to reserve space for their own use more than one year prior to the date they expect to use it, if they have present demands from other parties to use that space for collocation.

88, n.154 Indeed, the ILEC's depreciation reserve should have already accumulated the necessary funds to pay for the removal of retired equipment, and accordingly, the ILEC should not be allowed to assess any charge for the removal of obsolete material and equipment.

88, n.155 Additionally, BOCs should not be allowed to reserve any space in their central offices for future interLATA toll equipment, since they have no current legal right to offer such services.

89 An incumbent may not deny a request for physical collocation under this section unless it shows that:

(1) it has removed all obsolete and unused equipment from the premises;

(2) all non-network operations functions in the building have been eliminated and moved elsewhere; and

(3) it cannot reconfigure the equipment in its office within a reasonable time to accommodate additional collocation request.

89, n.156 Even if an incumbent cannot make space available in time to meet the specific request of a particular carrier, it should have an ongoing duty to apply reasonable space management techniques to make additional space available for future collocation requests.

89-90 The Commission both can and should require incumbents to take such actions, in order to maximize the availability of space for collocation. In particular, the ILEC should be required to inventory its space in each central office to track what space is being use for administrative rather than network purposes. The ILEC should be required to provide the prospective collocator with a detailed floor plan of the central office in any situation in which the ILEC has denied collocation space. The ILEC also should be required to allow the collocator to tour, inspect and photograph the entire central office to confirm that the space is being used as the ILEC claims.

89, n.157 ILECs must also be required to seek a physical collocation exemption when they first learn that they have no space available, rather than wait until the "next" collocator arrives with the request. AT&T has encountered a number of circumstances in which ILECs advise AT&T that they have no collocation space but have not received any

state exemption from providing collocation, since AT&T is supposedly the first carrier to ask for space and be turned down. The ILECs should receive the exemption in advance by the state statute. The Commission should also require ILECs to maintain a publicly and conveniently accessible list of the offices where physical collocation is available and where it is not.

90 Unlike CLECs, the ILEC's advanced services affiliate has unique incentives to "over consume" collocation space, and to occupy a large proportion of the available collocation space in the ILEC's central offices and other locations.

91 As in the case of allocation of space in remote terminals, the Commission should consider limited an ILEC's separate affiliate to no more than 25% of either the currently conditioned or total unconditioned space, or a percentage of currently utilized space equal to that afforded other requesting CLECs if more than three CLECs have space requests pending.

92 Allowing parties to utilize copper facilities to interconnect with the ILEC network could provide important benefits in several situations.

95 AT&T is not aware of any reason why "it may not be technically feasible to offer unbundled access to individual packet switches. Accordingly, the Commission should reaffirm that packet switching, like switching generally, is a functionality fully subject to the unbundling obligation.

95 While NTIA has made several highly constructive contributions to these proceedings, its suggestion that the Commission could forbear from enforcing the requirements of § 251(c) "on a service-by-service basis" cannot be adopted under the Act. Section 10 expressly prohibits the Commission from forbearing from applying "the requirements of section 251(c)" until those requirements have been "fully implemented."

97 The Commission Should Clarify That The ILECs May Not Procure Or Accept Language In Their Licensing Agreements With Third-Party Vendors That Purports To Prohibit The ILECs From Complying With Their Nondiscriminatory Access And Interconnection Obligations.

103 Any application under § 3(25)(B) must, of course, be examined on an individual basis once it is filed, and resolved based on the facts it presents. But insofar as the NPRM suggests that the Commission might attempt to use its boundary modification authority broadly to enable BOCs in numerous instances and categories of instances to provide services that interexchange carriers would otherwise provide, that suggestion is ill-conceived and should not be adopted.

103 To begin with, any such attempted use of § 3(25)(B) is foreclosed by § 10(d) of the Act, which prohibits forbearance from the requirements of § 271 until those requirements have been "fully implemented."

107 Indeed, the BOCs have themselves shown no genuine interest in identifying areas in which targeted relief might be appropriate, but have instead made such claims solely

as a pretext for broader relief.

108 The Commission seeks comment on its tentative conclusion that the ILECs' advanced services are subject to the resale obligation of § 251(c)(4). That conclusion is plainly correct.

9. BELL ATLANTIC

3 [T]he Commission can best promote the deployment of advanced services in the most efficient manner by granting the interLATA relief the Bell companies need to provide advanced services on an end-to-end basis.

4 The Commission's authority to modify LATA boundaries [under section 3(25)(B) is undisputed.

4 Modifying LATA boundaries for the purpose of operating these dedicated high capacity computer-to-computer links is more limited than LATA boundary relief the Commission has routinely granted for traditional telecommunications services. Moreover, because the Bell companies would still need the Commission's approval to enter the $80 billion general long distance market, this relief would not diminish their incentives to meet the Act's section 271 requirements.

6 High speed access to Internet backbones is not available everywhere, and many areas have been bypassed by the three carriers that dominate the Internet backbones. Even where high speed access to the backbones is available, moreover, there typically are a limited number of facilities providers to choose between.

6 [T]he Commission should modify the LATA boundaries that currently preclude Bell companies from providing that access. Specifically, it should approve a LATA boundary modification to permit Bell companies to carry traffic to the nearest network access point, or "NAP," whether public or private.

7 The Commission also should permit Bell companies to provide advanced Intranet or Extranet services to businesses, universities or health care providers.

8 Targeted relief for Intranets and Extranets will not detract one iota from Bell Atlantic's need to be able to offer the full range of services – local, toll and long distance – for its tens of millions of customers so that it does not lose them to competitors that can and do offer all of these services.

8-9 Because the telecommunications universe is not a static one, the Commission should establish an expedited process for Bell companies to request case-specific relief in the future in response to unique circumstances.

9 n.4 Specifically, the process should be modeled on the Commission's current approach for handling LATA boundary modification requests, but subject to uniform deadlines

for pleadings and a decision – with comments and replies due on a 15 and 10 day cycle, and a decision within 60 days of filing.

10 When a Bell company provide interLATA information service using transmission services obtained from others, it is not providing interLATA services under section 271.

11 Based upon [the] express language of the Act, as well as the supporting legislative history, the Commission has correctly concluded that telecommunications and information services are distinct, non-overlapping sets.

12 It is, in short, now unmistakably clear that when a Bell company provides an information service, it is not "providing telecommunications," at least so long as it uses leased transmission facilities that are bundled into its information service for a single price.

13-14 Section 272 consistently affords separate treatment to "information services" and to "telecommunications services."... [T]he sunset date for interLATA information services is keyed to passage of the Act, further confirming that Congress anticipated that these services, unlike interLATA telecommunications, could be provided immediately upon enactment.

14 In its *Non-Accounting Safeguards Order*, the Commission concluded that at least some types of "interLATA information services" fall within the definition of "interLATA services." As the Commission has since made clear, this conclusion does not apply where transmission services are obtained from third parties for use in providing the information service.

18 [T]he Commission should invoke its authority under section 251 of the Act to make clear that when advanced mass market services are offered by the local telephone company, the unbundling and resale obligation in section 251(c) do not apply. It should also make clear that Internet-bound calls delivered over these advanced services are not subject to the payment of reciprocal compensation. In contrast, imposing a separate affiliate requirement as the price to avoid existing requirements will only substitute one set of regulatory barriers for another.

18-19 [B]y far the most efficient way for incumbent carriers to deploy advanced services – particularly to the mass market – is through the operating local telephone companies. This allows the telephone companies to draw upon their existing work forces, expertise, and operating and billing systems to deploy and operate these advanced services, and to avoid the significant duplication of costs that would be incurred if the services were to be deployed through a separate entity.

19 [U]nder section 251(d)(2), equipment and facilities used to provide advanced services do not need to be unbundled where failure to provide a competitor with access to those elements will not "impair" its ability to provide services (or where access to

proprietary elements is not "necessary").

20 Likewise, section 251(c)(4) creates a duty only to not impose "unreasonable" conditions or limitations on the resale of telecommunications services, and assigns the Commission a role in determining what is and is not reasonable. But this duty must be balanced against the Congressional directive to promote deployment of advanced services.

20 [T]he Commission should make clear, once and for all, that Internet-bound calls delivered over these advanced services are not subject to the payment of so-called "reciprocal compensation."

21 As history conclusively shows, imposing a separate affiliate structure as the price to deploy new services free of existing regulatory constraints merely substitutes a whole new set of regulatory barriers that will increase costs and delay deployment to the mass market.

22 The Commission's experience with separate subsidiaries for voice messaging services shows the costs to be staggering.

22 [S]eparate subsidiary obligations are actually anticompetitive and hurt consumers by artificially imposing unnecessary costs on one of the competitors.

23 [T]he Commission has found that non-structural safeguards are effective...

23 Bell Atlantic routinely has provided interLATA services in New Jersey-New York and southern New Jersey-Philadelphia corridors for over ten years without structurally separating its retail and wholesale operations and without anticompetitive consequences.

24 Bell Atlantic and other incumbent local exchange carriers have long been allowed to provide information services without structurally separating their retail and wholesale operations, and the evidence shows that competition in these markets has been enhanced. If Bell Operating Companies were able to inhibit competition in these markets, output would have dropped and prices would have risen. But, in fact, just the opposite has occurred. From 1990 to 1995, the incumbent local exchange carriers' participation in this market increased from zero to over six million subscribers, but their subscriber base collectively accounts for just over 15 percent of voice messaging service revenues nationally.

25 Since 1984, the Bell Operating Companies have been permitted to distribute customer premises equipment ("CPE") without separating their retail and wholesale operations but have not impeded competition. In the intervening 14 years, output has steadily grown and prices have fallen, and the Bell companies are dwarfed by major vendors such as Lucent, Nortel, and Siemens.

25 The Commission's separate subsidiary focus, then, is misguided. It imposes significant costs that ultimately must be borne by consumers, yet will not produce any discernable benefit.

26 As a general matter, the courts have found that an entity becomes a successor or assign of another only upon "a completed transfer of the entire interest of the assignor in the particular subject of assignment, whereby the assignor is divested of all control over the thing assigned."

26 Contrary to the Commission's assumption, however, simply transferring customer lists, giving customers the option of switching to a new provider, or agreeing to fill unfilled orders is not sufficient to make the assignee a successor or assign.

27 n.16 [A]n affiliate [cannot] become a successor or assign of a Bell operating company "merely because it is engaged in local exchange activities." Instead, the Commission will consider an affiliate to be a successor or assign only where it "transfers network elements to the affiliate. Here, however, the Bell company would continue to provide its existing local telecommunications services, including local loops as unbundled network elements. And, for the reasons outlined above, the Commission should make clear that the equipment deployed to offer advanced services over these loops do not qualify as network elements that must be unbundled under the standards of Section 251(d)(2).

28 There is also no reasons for the Commission to impose a time limitation on transfers of equipment.

28 Bell Atlantic estimates that deployment of DSL in a separate affiliate would delay its deployment by at least one year and reduce the number of homes passed by 30 percent or more.

28 There is no reason to restrict the transfer of information from an incumbent carrier to an affiliated separate subsidiary.

29 There is no reason to prohibit an incumbent carrier from performing operations, installation, and maintenance for an affiliated separate subsidiary.

29 There is no reason for the Commission to restrict incumbent carriers from transferring customer accounts to the advanced services affiliate or to prohibit them from joint marketing.

29-30 [W]hen a customer purchases DSL, it can be provisioned over the customer's existing loop, which is also used to provide voice and data services.... Under the Commission's proposed structural separation, however, advanced services would essentially compete with the incumbent carrier in providing voice and vertical services. This would duplicate customer acquisition costs and cause customer confusion, as requiring duplication of local loop facilities. It makes no business sense

to pursue such a strategy when none of these problems exist in the current structure.

30 There is no reason for the Commission to change its CPNI rules. Today, carriers may use, and share with their affiliates, CPNI from local services to market advanced services such as DSL – they are both in the same local services bucket.

30-31 There is no reason to restrict the affiliate's ability to use the incumbent carrier's brand names.... [B]arring affiliates from using an incumbent carrier's brand name would be flatly violative of the First Amendment.

31 There is no policy reason to preclude an advanced services affiliate's access to its parent's capital.... Even section 272 affiliates, as saddled as they are with restrictions, can still acquire capital from a Bell company parent.

31 The Commission should not revise its collocation rules. Under the 1996 Act, states have been given responsibility to determine whether sufficient space is available for physical collocation, and the states alone should develop any new rules that are needed to implement this authority.

32 In particular, the Commission should not require unsecured "cageless" collocation arrangements. The Commission has already decided that physical collocation space should be separated from the incumbent carrier's network for security reasons.

34 [A]ny requirement to allow cageless arrangements that give access outside of the separate, secured area would mean that incumbents would be the only carriers that would not be permitted to secure their own equipment to prevent access by non-affiliated carriers.

35 [T]he Commission does not have authority to require incumbent LECs to give competing carriers access to unsecured portions of the incumbent's premises.... [T]he collocation provision of the Act requires local exchange carriers to provide for collocation specifically to allow competing carriers to obtain "access to unbundled network elements at the premises of the local exchange carrier."

36 [A]ny requirement to allow competing carriers to enter an incumbent's premises outside of a collocation arrangement would violate the Fifth Amendment, because the Commission does not have such taking authority.

37 The Act authorizes carriers to collocate equipment solely for interconnection and access to unbundled network elements. Congress did not establish a collocation requirement that opens the incumbent carriers' central offices to anyone who wants to locate any type of equipment in those offices. Instead, Congress prescribed collocation only for competing carriers and only for "equipment necessary for interconnection or access to unbundled network elements."

38 [T]he Commission should adopt its tentative conclusion and continue its present

policy of prohibiting collocation of equipment used for enhanced services. Only telecommunications carriers, not enhanced service providers, are covered by the provisions of the Act governing interconnection and access unbundled network elements.

39 Incumbent carriers should be able to require that collocated equipment meets industry standards on a non-discriminatory basis (e.g., NEBS safety standards and performance standards that limit service interference).

40 The Commission should not ... adopt its tentative conclusion that incumbent exchange carriers must provide a list to each requesting carrier of all approved equipment and all equipment they use.

40 The Act gives state commissions exclusive authority to administer the availability of collocation space by providing that a local exchange carrier may offer virtual collocation in lieu of physical if it "demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

41-42 The Commission should not interfere with these state efforts by requiring incumbent local exchange carriers to permit "any competing provider that is seeking physical collocation at the LEC's premises to tour the premises."... Congress gave state commissions the exclusive right to resolve disputes regarding space availability.... Many carriers will likely want to tour central offices to gain obtain competitive information about their competitors and determine whether they are warehousing space.

43 Since nearly all competing carriers request custom-designed physical collocation arrangements, the Commission should not attempt to specify nationwide standard space preparation intervals or standard charges for space preparation.

44 There is no reason for the Commission to adopt new loop unbundling rules.... The Commission's existing unbundling rules are adequate for competing carriers that want to offer advanced services.

45 [P]ursuant to the terms of interconnection agreements, Bell Atlantic is in the process of making pre-tested DSL compatible loops available to its competitors and its own retail operations on a nondiscriminatory basis.

45 Bell Atlantic's retail sales channels and Bell Atlantic's competitors will have nondiscriminatory access through a web-GUI interface to the database [of DSL compatible loops].

46 Where Bell Atlantic does not condition loops or collect detailed loop information – either for its own advanced services or for competitors – it does not violate any conceivable interpretation of the section 251 non-discrimination standard. No

competitor would be favored or disadvantaged, and Bell Atlantic's operations would obtain no benefit compared to new entrants.

47 Conditioning a loop for one advanced service does not necessarily mean that the loop will support other advanced services. If electronics are added to a loop to enable it to support ISDN, for example, the presence of these electronics could disqualify that loop for ADSL.

48 The Commission should not attempt to regulate loop spectrum. The technology for advanced services is, by definition, new and evolving. Any attempt by the Commission to set spectrum management rules would impede the development and deployment of these new technologies. The Commission should instead require local exchange carriers to manage loop spectrum in accordance with their non-discrimination obligations, at least until national standards for spectrum management are developed.

49 There is no reason to consider a requirement that would allow multiple carriers to purchase spectrum capacity on a single unbundled loop. The Commission has already determined that a carrier purchasing an unbundled element is purchasing the right to exclusive access or use of the entire element. It is not purchasing an access service, such as spectrum capacity on a single loop.

50 If a common carrier purchases a loop as an unbundled network element, ... it will have to provide whatever services requested by the customer served by that loop, including advanced and voice services. The Commission's order would prohibit carriers purchasing unbundled loops from providing solely advanced services over those loops.

50 It is entirely premature and unnecessary for the Commission to consider setting standards for the attachment of equipment at the central office end of a loop.

50 [T]he Commission should not apply Part 68 rules to central office equipment, as it suggests.

51 There is no reason for the Commission to require subloop unbundling of loops that are configured with digital loop carriers or remote terminals. The Commission has already found that it is inappropriate to require subloop unbundling and nothing has changed that would justify a reversal of that finding.

51 Providing access to loop concentration points by competitors would increase the risk of error by a competitor's technicians that may disrupt service to customers of one or both carriers. There is still no technology that would eliminate or substantially reduce this risk.

52 The Commission should uphold its prior determination that access services are not retail services subject to the wholesale discount provision so section 251(c)(4).

53 [DSL services] are "fundamentally non-retail services" because they are designed for and sold as input components to retail Internet services.... The fact that some large end users might purchase these xDSL exchange access services directly from an access tariff and create their own Internet service package is no different from what they can do today when they purchase exchange access service to create their own long distance service. In either case, the direct purchase of exchange access services by large end users does not change the fundamentally non-retail character of exchange access service.

53 Moreover, the cost of providing DSL exchange access service to Internet Service Providers and to competing carriers are essentially the same. There are no retail costs associated with providing these costs to Internet Service Providers that Bell Atlantic would avoid when providing them to competing carriers.

54 Imposing wholesale pricing requirements on DSL services provided as exchange access services under access tariffs will create an incentive for Internet Service Providers to game the regulatory system to qualify for wholesale discounts.

54 Internet Service Providers have already begun setting up shop as "carriers" for the sole purpose of getting paid reciprocal compensation for the Internet traffic that is delivered to them.

10. BELLSOUTH

8 In its comments to the *NOI*, BellSouth explained that advanced services must include all services – regardless of technology or transmission media and regardless of preexisting regulation classification – which offer consumers a high level of bandwidth for efficient, interactive voice and data communications. An expansive definition of advanced services is vital because, as the Commission noted, the concept of what constitutes advanced services will evolve as technology evolves.

12 BellSouth will face competition [in the advanced services market] not only from cable operators, satellite service providers, and wireless cable providers, but also from CLECs that can purchase unbundled local loops and attach their own DSL equipment.

13 If ILECs must for separate affiliates as a precondition to regulatory relief, then ILECs must divert resources from deployment to form an advanced services affiliate. The result of this diversion will be to delay substantially and to curtail further ILEC deployment of advanced services.

14 The time and resources that ILECs would waste by creating a separate advanced services affiliate would be better spent maximizing the deployment of advanced services to residential and small business consumers.

14 Without any evidence or analysis suggesting a need for such a framework, the *Notice*

manifests such a bias in favor of that framework that it ignores less regulatory solutions. Indeed, the *Notice* clearly signals that ILECs that do not opt for a separate affiliate can expect their integrated provision of advanced services to be subject to "truly" onerous regulatory burdens.

15 History has shown that separate affiliates result in increased costs, lost efficiencies, and less innovation, and place ILECs at a competitive disadvantage vis-à-vis their competitors.

15-16 The Commission's *Computer II* and *III* proceedings provide the paradigmatic example of how an inflexible regulatory framework, through well-intentioned, can discourage the development of innovative services.

20 The effect of eliminating *Computer II*'s separate affiliate requirement on the deployment of enhanced services has been unmistakable. As early as 1991, the Commission observed that "BOCs have provided voice mail service, e-mail, gateways, electronic data interchange, data processing, voice store-and-forward, and fax store-and-forward services."... In short, replacing structural separation with a framework that permitted the BOCs to offer enhanced services on an integrated basis achieved the results that the Commission is seeking to achieve here: the deployment of innovative new services on an efficient and timely basis and the development of a robustly competitive market.

21 Given the proven success of using a non-structural safeguards framework in promoting the deployment of enhanced services, the Commission should adopt a framework in this proceeding that will similarly encourage ILEC provision of advanced services on an integrated basis. As in the enhanced services context, integrated operation will allow ILECs to enjoy economies of scope and realize efficiencies of operation, which will lead to broader deployment and lower cost for consumers.

22 [Advanced services] function as access services connecting consumers to information located on the Internet or on other data networks via ISP platforms. As Congress did not include access services within the scope of Section 272, the Commission should not now circumvent Congress' framework by relying on a Section 272-type framework in this proceeding. To the contrary, the Commission should fulfill Congress' intentions by expeditiously granting Section 271 relief so that BOCs can provide interLATA data services on par with its competitors and thereby be given the ability to compete fully in the entire advanced services market.

23 In place of the separate affiliate approach, the Commission should interpret the Communications Act to remove regulatory impediments to ILEC investment in advanced services.

23 The Commission should not adopt prescriptive unbundling rules for advanced services equipment. A firm's success or failure in the advanced services market will

depend upon many factors, including consumer demand, the quality and price of service, and the development of increasingly sophisticated technologies. Ideally, the Commission's regulatory framework should not also be one of those factors.

24 The Commission must also refrain from requiring unbundling where the ILEC's failure to provide requested network elements will not impair the ability of the requesting carrier to provide its services.

25 BellSouth already has made available unbundled network elements that support the deployment of DSL services, enabling competitors to deploy the equipment of their choice.

26 [T]he Commission must not view ADSL as the only advanced services product that will be offered by the ILECs, but should recognize ADSL technology as a transitional method of providing additional bandwidth for advanced services over the local loop.

27 The Commission should not assume that advanced services equipment ... will not be available on an unbundled basis unless the Commission requires its on a national level. Rather, the Commission should first rely on voluntary negotiations and, if they fail, trust the state commissions to fulfill their statutory responsibility to make advanced services equipment available to competitors where appropriate under Section 251 and 252.

28 The Commission's analysis fundamentally misreads the requirements of Section 251(c)(4). Under Section 251(c)(4), an ILEC must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Thus, by its express terms, the Section 251(c)(4) resale obligations only apply if (1) a service is offered at retail and (2) the service is offered to subscribers who are not telecommunications carriers. The Commission's proposal ignores the first part of this two-part test.

29 The Commission must aggressively implement its Section 10 forbearance mandate to remove pricing and tariffing restrictions that impede ILECs' ability to respond to market conditions.

30 [U]nder Section 10, the Commission is *required* to forbear from any regulatory requirement or statutory provision for which (1) enforcement is not necessary to ensure that rates and practices of a telecommunications carrier or service are just, reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.

31 In light of the Commission's long-standing policy on streamlining regulation of non-dominant carriers, the Commission should freely grant forbearance from dominant carrier pricing and tariffing requirements for advanced services offerings in any case in which the requesting carrier demonstrates its lack of market power in the advanced

services market.

33 If the Commission truly seeks to promote the deployment of advanced services on a timely basis, it is imperative that it promptly grant Section 271 petitions and remove this high hurdle to full-fledged competition.

33 Modifying LATA boundaries to permit BOCs to deploy advanced services, while a procompetitive gesture, would not address the fundamental incompatibility of the LATA construct with the provision of advanced services and would leave BOCs at a substantial competitive disadvantage and with limited investment incentives.

34-35 If the Commission persists in formulating a separate affiliate options for the provision of advanced services, BellSouth opposes the current proposed framework because it exceeds what is legally and practically necessary to form a non-ILEC affiliate. Rather than impose the rigid separation requirements of Section 272, which were designed merely as a transition framework for BOC entry into interLATA services, the Commission should follow its more recent decisions and base any separation requirements upon the framework developed in the *Competitive Carrier* proceeding.

37 Under a modified version of [the *Competitive Carrier*] framework, an advanced services affiliate would not be deemed an ILEC if the affiliate (1) maintains separate books of account, (2) does not jointly own transmission or switching facilities with its affiliated LEC that the LEC uses for the provision of local exchange services in the same in-region market, (3) acquires telecommunications facilities, services, or network elements from an affiliated LEC pursuant to tariff or a negotiated agreement under Sections 251 and 252 of the Act, and (4) acquires non-telecommunications services from the affiliated LEC on an arm's length basis pursuant to the Commission's affiliate transaction rules.

38 In the 1996 Act, Congress adopted a precise and limited definition of which entities would be considered ILECs and would be subject to the obligations of Section 251(c). ILECs are only those entities that were members of the National Exchange Carriers Association ("NECA") on the date of enactment of the 1996 Act, or their successors or assigns. As no advanced services affiliate would have been a member of NECA in 1996, such affiliates could only be deemed ILECs if they are "successors or assigns" of an ILEC.

39 A separate affiliate that complies with the *Competitive Carrier* framework sufficiently insulates the affiliate from ILEC status.

41 [A]pplying a *Competitive Carrier* framework to ILECs who choose to provide advanced services through a separate affiliate would address any lingering concerns that the Commission may have regarding cost misallocation and discrimination.

41 Adopting a *Competitive Carrier* framework for advanced services affiliates would also allow a greater level of efficiency than would be available under the

Commission's proposed "truly" separate affiliate framework.

42-43 The Commission should not "handicap" ILECs by limiting their ability to jointly market advanced services with their affiliates, "particularly when significant competitors in the markets for [advanced] and integrated systems are not so limited."

43 The Commission should allow a one-time transfer of advanced services operations to an affiliate without deeming the affiliate an ILEC.

44 Similarly, the Commission should freely allow the transfer of items other than facilities, such as customer accounts, employees, and brand names, to the advanced services affiliate.

44 The Commission should not transform this proceeding into another local competition proceeding.

44 [T]he states, with their greater knowledge of local conditions and their ability to arbitrate on a case-by-case basis, should continue to be at the forefront of implementing the collocation and unbundling rules to promote the development of advanced services.

45 The Commission should not adopt additional collocation and loop unbundling rules that increase regulatory burdens on ILECs and preempt the state commissions.

46 BellSouth opposes proposals in the *Notice* that would effectively micromanage the collocation arrangements that ILECs enter into with their competitors.

48 [T]he Commission should clarify that, while ILECs are required to provide unbundled local loops to competitive carriers, ILECs are not required to provide assurances that such carriers will be able to provide DSL service to consumers over those loops.

48 [E]ven if an ILEC can provide DSL service over a particular loop, a competitor may not be able to provide another DSL service because of the differences in technology.

48-49 [T]he Commission should not require ILECs to compile comprehensive information about local loop conditions or the ability of a particular loop to handle DSL service.... [S]uch information would almost never be reliable. Changes to loop conditions occur constantly, and attempting to keep track of loop information that competitors might desire would be an administrative nightmare. Of course, to the extent that BellSouth has compiled such information, it will be made available to competitors upon request.

49 The Commission should not attempt to prescribe a rule to address [sub-loop unbundling], but should continue to leave the issue of sub-loop unbundling to negotiation and, if necessary, arbitration by state commissions.

49 BellSouth vigorously opposes the Commission's proposal to require ILECs to allow collocation in remote terminals.

50 In most remote terminals, space is quite limited, and ILECs often will be required to deny requests for remote terminal collocation. Additionally, DLC cabinets have severe power and heat dissipation limitations, which could require denial of collocation requests even if space were available.... Moreover, collocation in remote terminals is unnecessary. BellSouth has been able to successfully negotiate agreements that provide competitors access to sub-loop elements without providing collocation at remote terminals. Instead of collocation, a cross-box to cross-box interconnection arrangement is the established method of providing competitors with full access to all necessary sub-loop elements.

52 Spectrum management is critical as new systems are deployed using advanced technologies. Fortunately, spectrum management is not new to the industry and efforts have been made to develop proper standards. The Commission accordingly should rely on standard-setting bodies, such as ATIS Committee T1, to set guidelines for loop spectrum management.

52 Spectrum unbundling, however, is a new concept, and one of great concern to BellSouth..... If the Commission permits a competitor to obtain loop elements for the purpose of providing advanced services only, the underlying voice carrier may be adversely affected by interference caused by incompatible technology.... Only by maintaining the requirement that a competitor purchase the loop element as a facility and not as a function can the Commission ensure accountability over loop quality is adequately maintained.

52-53 BellSouth does not have any point on its network at which the loop can be unbundled to allow the data portion of the spectrum to go to another carrier while allowing BellSouth to keep only the voice portion.

54 BellSouth urges the Commission ... to allow ILECs to reject the attachment of any equipment on grounds of technical incompatibility if such equipment is either not NEBS compliant or not exactly the same as equipment that the ILEC uses.

11. CABLEVISION LIGHTPATH

4-5 As the statutory definition of LATA dictates, a LATA modification is a modification of a particular "geographic are" with a border that demarcates that are from adjacent areas. Thus, the modification of a particular LATA necessarily involves the moving of that LATA's border from one geographical location to another, such that some traffic that was interLATA becomes intraLATA and some traffic that was intraLATA becomes interLATA.... [W]hat the Bell companies are seeking does not in any way involve the moving of a geographic border from one location to another and cannot be coherently characterized as a LATA boundary modification.

5-6 Perhaps because Congress knew there would be great pressure on the Commission to lift the interLATA services prematurely, before markets were truly opened, it chose not to give the Commission any general waiver authority of the kind that existed under the AT&T consent decree.

7 Allowing the BOCs to transport advanced services traffic across LATA boundaries before they have met their obligations under section 271, even in selected areas, will only serve to diminish their incentive to open their local networks, thereby slowing the development of local competition.

9 Today, in most instances, ILECs require CLECs to go through a lengthy and expensive Bona Fide Request ("BFR") process for any network element not specifically identified in the CLECs interconnection agreement with the ILEC. Allowing ILECs to require BFRs would hamper CLECs' ability to gain access to xDSL elements, cause unnecessary delays and deter competition in the advanced services market.

10 The Commission should prevent [delays caused by the BFR process] by adopting its tentative conclusions that xDSL is presumed to be technically feasible, and that the ILECs bear the burden of refuting that presumption.

12. COMMERCIAL INTERNET EXCHANGE ASSOCIATION

2 Local telecommunications is defined today by monopoly providers, protective regulatory oversight of end-user services, and vertical integration and bundling of numerous cross-service subsidization.

3 The recent RBOC Section 706 relief petitions and the ILEC ADSL tariffs amply demonstrate that the ILECs envision a vertically integrated service: one owner of advanced data facilities and service for Americans, without regulatory protections, providing consumers a sole option from their computer all the way to, and including, the Internet backbone.

5-6 The RBOCs' Section 706 Petitions certainly start from the premise that monopolists can bets serve the American consumer by reaping certain efficiencies from vertical integration.

7 The ILECs' aggressive entry into information services is understandable in light of the fact that the 1996 Act may actually open competition to their existing monopoly services. The ILECs are striking back by leveraging their control over the local telecommunications markets into new unregulated markets, and the Commission's rules on this entry are insufficient.

7-8 [T]he Internet industry is today adversely affected by the lack of adequate safeguards under the Computer III-type regulations. The ONA process – designed to provide efficient access to underlying telecommunications services – is today an elaborate

federal process that has not measured up to the Commission's plan. This is not because unbundled elements would not be demanded by ISPs. Rather, the process yields too much discretion and control to the RBOCs.

8 Moreover, the provisioning of ILEC services to independent ISPs is notoriously slow and inadequate, despite the Computer III proscription against such conduct. CIX suggests that the Commission establish public data collection and performance standards for the ILEC provisioning of services to ISPs, and to its own affiliated-ISP, for such services as business lines, T1 lines, T3 lines, and ISDN lines.

9 CIX believes there should be an affirmative "ISP Choice" obligation so that consumers can select among several ISPs serving the market. Commission action to preserve ISPs should take two directions. First, consumers should be able to select the ISP they want regardless of the ILEC's underlying telecommunications decisions, and the ILEC should not be allowed to skew the end-user's decision by advantaging its ISP affiliate in the ISP market. Second, to ensure that consumers have viable choices among ISPs, the market for transport services to the competing ISPs should be open to competition.

11 CIX suggests that the Commission should prevent the vertical integration of the ISP market by providing ISPs with a method of bypass – functional and cost-based ISP access to ONA-type services, including unbundled local loops.

12 The Commission's role under a separate subsidiary model should be to ensure that the affiliate derives no advantage as a result of its affiliation with the incumbent LEC. CIX believes that separate affiliates must be operationally, managerially, financially, and technically separate from the ILEC. The Commission should establish a procedure to "certify" that an ILEC affiliate, in fact, complies with its requirements before that affiliate is permitted to operate. Mere ILEC statements or assertions of compliance with separate affiliate rules are insufficient. The BOCs' record of facial BOC noncompliance with Section 272 – despite their assertions that the y have met the requirements of that section – indicates that the Commission cannot rely on ILEC assurances that they will follow its rules.

13 Without independent operations, the separate affiliate will be little more than a retail are of the incumbent and the ILEC has merely avoided its obligations through corporate "shells."

14 As the ILECs separate affiliate will likely offer its ADSL service in a manner similar to the current ILEC bundled offerings, independent safeguards must also exist to protect the competitive ISP market. Without such safeguards the bundled offering of the affiliate may foreclose the independent ISPs from offering Internet access over ADSL service on competitive terms.

15 The Commission should prevent the affiliate and affiliated-ISP from leveraging this "good will" value by using the ILEC's name. Whether one considers this value a "de

minimis" transfer issue or an attribute of the monopoly, the ILECs' affiliates competing in deregulated markets – the affiliated CLEC and ISP – should not be able to usurp this advantage.

15 Another example of this potential marketing advantage is use of the ILEC's CPNI.... In CIX's view, the affiliate should not be permitted to take advantage of the ILECs CPNI .... [T]he ILECs CPNI should be available equally to all CLEC and ISP competitors, or the ILEC should be barred from sharing CPNI with its advanced service and ISP affiliates.

16 To avoid this advantage and customer confusion, safeguards should be adopted prohibiting such joint marketing of advanced services with the ILEC's voice service.

17 The Commission should establish rules, and a process of price review, designed to eliminate the ability of the ILEC and its affiliates to engage in a "price squeeze."

18 CIX believes it is appropriate for the Commission to establish affiliate-transaction rules that foreclose the ability of the ILEC, directly or indirectly, to offer favorable financial terms to its CLEC or ISP affiliate.

18 [T]he Commission should require that some truly independent, non-affiliated investor(s) hold a minority ownership share (e.g., 10% or 20%) in the affiliate.

19 The offering of services using different technologies than the traditional circuit switched PSTN through an unregulated separate affiliate should not result in the extension of the ILEC monopoly.

19 In order to ensure that competitors' can adjust to regulatory changes or the next ILEC service roll-out, CLECs should be provided with cost-based resale access to the advanced services affiliate's DSLAM and other facilities required to provide advanced services, on an interim basis. CIX recommends that the Commission establish a transition period for such resale that will enable CLECs to move from complete resale to facilities-based offerings.

20 The transition period for resale of advanced services facilities should expire either when the ILEC has met its Section 271 checklist or in two years. If sufficient competitive requirements have been met by the incumbent, the this safeguard will no longer be necessary.

21 ISPs should continue to have equal pricing, terms, and conditions to underlying telecommunications as the ILEC affiliate ISP. The Commission should clarify that these existing obligations apply fully to the affiliate CLEC, so that all ISPs are able to purchase underlying telecommunications and interconnection arrangements that are offered to the affiliated ISPs.

22 As both a matter of law and policy, it is important to restrict transfers from the ILEC

to the separate affiliate. Section 251(h) of the 1996 Act appears to limit any sale or conveyance by the ILEC of facilities or network elements (existing and future) to the advanced services affiliate; such transfers may eliminate the separate affiliate status, subjecting the affiliate to ILEC regulatory obligations.

22-23 To preserve the [ILEC affiliate as separate], CIX believes that any *de minimis* exception for the transfer of facilities should be very limited. The types of facilities permitted to be transferred under this exception should be limited exclusively to DSLAMs and packet switches. No other transfers (such as real estate, employees, customer accounts, or brand names) should be permitted.

24 CIX agrees wholeheartedly with ALTS and many other CLEC commenters that the Commission should establish national rules to revamp the existing collocation and UNE processes.

24 CIX fully supports ALTS' position that CLECs should be permitted to collocate cost-efficient equipment, including switching and multiplexing equipment.

25 CIX also supports more flexible collocation options for CLECs such as virtual collocation and cageless collocation, which can reduce the costs of entering a given central office and provide for more efficient use of central office space.

26 Loop unbundling, including xDSL-capable loops, is also a prerequisite if CLECs and ISPs are to deliver a range of diverse Internet-based services.

27 Spectrum management issues present another area where the Commission must take a proactive stance to avoid ILEC decisions designed to stop CLEC competition.... Lack of spectrum management means that a customer would have to purchase a second line to connect to the CLEC's data service offering, while the ILEC's own voice and data service is offered as a bundled package over a single line.

27 In CIX's view, the ILEC must unbundle and resell the voice service to all unaffiliated CLECs on a nondiscriminatory basis.

28-29 From an ISP perspective, the ONA and CEI safeguards have devolved into paper processes only, which have not been enforced in a meaningful way for ISPs to gain access to the underlying telecommunications elements in an efficient manner.

30 CIX agrees with the Commission's tentative conclusion ... that the wholesale resale obligations of Sec. 251(c)(4) of the Act apply to "any telecommunications service" sold at retail by the ILEC to non-telecommunications carriers. Arguments that the Section 251(c)(4) obligations do not apply to such services as DSL fail for several reasons. First, ADSL services are not an "exchange access" service; it is a local telecommunications service that modifies and obtains additional bandwidth out of the existing local loop. Second, unlike traditional exchange access, ADSL service is not offered for telecommunications carriers: the ILECs' tariffs and related pleadings